



Interoffice Memorandum

REAL ESTATE MANAGEMENT ITEM 4

DATE: November 22, 2021

TO: Mayor Jerry L. Demings
-AND-
County Commissioners

THROUGH: Mindy T. Cummings, Manager
Real Estate Management Division *MTC*

FROM: Elizabeth Price Jackson, Senior Title Examiner *EPJ/MTC*
Real Estate Management Division

CONTACT PERSON: **Mindy T. Cummings, Manager**

DIVISION: **Real Estate Management**
Phone: (407) 836-7090

ACTION REQUESTED: Approval and execution of Trail Crossing Easement Agreement (Costa Farms / West Orange Trail) by and between Engelmann Holding Company f/k/a Hermann Engelmann Greenhouses, Inc., E&H Clarcona, LLC, and Orange County and authorization to record instrument

PROJECT: West Orange Trail Crossing (Engelmann Access Easement)

District 2

PURPOSE: To provide for access, construction, operation, and maintenance of recreational trail crossing.

ITEM: Trail Crossing Easement Agreement (Costa Farms / West Orange Trail)
Revenue: None
Size: 1,658 square feet

APPROVALS: Real Estate Management Division
County Attorney's Office
Parks and Recreation Division
Risk Management Division

REMARKS:

Engelmann Holding Company f/k/a Hermann Engelmann Greenhouses, Inc. and E&H Clarcona, LLC (“Engelmann”) has requested that the County enter into the Trail Crossing Easement Agreement (“Agreement”) in order to identify the existing crossing of the West Orange Trail which provides access to the Engelmann properties. The crossing was originally over the Atlantic Coast Line Railroad (“ACLRR”) tracks and existed for many years prior to the abandonment of the railroad line. In 1967, the ACLRR sold the abandoned railroad corridor to County which utilized the old railroad right-of-way in a rails to trail project creating the West Orange Trail.

Since there was no recorded agreement allowing the crossing of the railroad right-of-way, it appeared that there was no legal access to the Engelmann properties. The Agreement formalizes the access to the Engelmann properties.

Engelmann to pay all recording fees.

DEC 14 2021

This Instrument Prepared By
and After Recording Return To:

James Johnston, Esq.
Shutts & Bowen LLP
300 South Orange Avenue, Suite 1600
Orlando, Florida 32801

Property Appraisers Parcel Identification Number: a portion of 22-21-28-0000-00-048

Project: West Orange Trail Crossing (Engelmann Access Easement)

SPACE ABOVE THIS LINE FOR RECORDING DATA

TRAIL CROSSING EASEMENT AGREEMENT

(Costa Farms / West Orange Trail)

THIS TRAIL CROSSING EASEMENT AGREEMENT (this "**Agreement**") is made as of the Effective Date (hereinafter defined) by and between ENGELMANN HOLDING COMPANY, a Florida corporation, formerly known as Hermann Engelmann Greenhouses, Inc., a Florida corporation, whose address is 902 Golf Valley Drive, Apopka, Florida 32712, ("**Engelmann**") and E&H CLARCONA, LLC, a Florida limited liability company, whose address is 902 Golf Valley Drive, Apopka, Florida 32712, ("**E&H**", and together with Engelmann, "**Owner**") and ORANGE COUNTY, a charter county and political subdivision of the State of Florida, whose address is P. O. Box 1393, Orlando, Florida 32802-1393, ("**County**").

RECITALS

A. Owner is the owner of record of fee simple title to the Owner Property (hereinafter defined) which is currently operated for agricultural purposes ("Owner's Intended Use").

B. County is the owner of record of fee simple title to the County Property (hereinafter defined), which County Property is currently improved with a recreational trail and other improvements, and owned, used, enjoyed, and operated by County as part of the West Orange Trail (hereinafter defined).

C. The owners, occupants, lessees and invitees of the Owner Property have used the County Property for ingress and egress to the Owner Property since a time prior to the County's acquisition of the County Property.

D. To memorialize the foregoing use of the County Property, the Owner has requested that County, and County has agreed to, grant Owner an easement over the County Property, all as more particularly set forth herein.

NOW, THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00), the mutual covenants and agreements set forth herein, and other good and valuable considerations, the receipt

and sufficiency of which are hereby acknowledged, the Parties (hereinafter defined) hereby agree as follows:

ARTICLE I
RECITALS; DEFINITIONS

Section 1.1 Recitals. The recitals set forth above are true and correct and are incorporated herein by this reference.

Section 1.2 Definitions. As used in this Agreement, the following defined terms shall have the following defined meanings:

(a) Board. The term “**Board**” shall mean and refer to the Orange County Board of County Commissioners.

(b) County Property. The term “**County Property**” shall mean and refer to the real property that is legally described on Exhibit “A” attached hereto.

(c) Owner Permittees. The term “**Owner Permittees**” shall mean and refer to: (i) Owner; (ii) future owners, occupants, and lessees of the Owner Property; (iii) employees, contractors, subcontractors, consultants, and other agents of Owner; and (iv) the officers, directors, members, managers, stockholders, partners, trustees, fiduciaries, beneficiaries, licensees, invitees, permittees, and guests of any person set forth in subclauses (i), (ii), and (iii) above.

(d) Owner Property. The term “**Owner Property**” shall mean and refer to, collectively, (i) the real property owned by Engelmann that is legally described on Exhibit “B-1” attached hereto, and (ii) the real property by E&H that is legally described on Exhibit “B-2” attached hereto.

(e) Owner’s Intended Use. The term “**Owner’s Intended Use**” shall mean and refer to the use of the Owner Property strictly for agricultural purposes. For purposes of this Agreement, “agricultural purposes” includes, but is not limited to, horticulture; floriculture; viticulture; forestry; dairy; livestock; poultry; bee; pisciculture, if the land is used primarily for the production of tropical fish; aquaculture as defined in section 597.0015, Florida Statutes, as may be amended; algaculture; sod farming; and all forms of farm products as defined in section 823.14(3), Florida Statutes, as may be amended, and farm production.

(f) Driveway Improvements. The term “**Driveway Improvements**” shall mean and refer to, the improvements to the County Property as they exist on the date hereof.

(g) Effective Date. The effective date of this Agreement (the “**Effective Date**”) shall be the date when the last one of the Parties has properly executed this Agreement as determined by the date set forth immediately below their respective signatures.

(h) Notice Addresses. The term “**Notice Addresses**” shall mean and refer to:

As to Owner:

Engelmann Holding Company

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E&H Clarcona, LLC
Attn: Andrew Engelmann
902 Golf Valley Drive
Apopka, FL 32712

As to County: Orange County Parks and Recreation
Division
Attn: Manager
Barnett Park
4801 W. Colonial Dr.
Orlando, FL 32808

With a copy to: Orange County Real Estate Management
Division
Attn: Manager
400 E. South St.
5th Floor
Orlando, FL 32801

(i) Parties. The term “**Parties**” shall mean and refer to, collectively, Owner and County.

(j) Permits. The term “**Permits**” shall mean and refer to, collectively, any and all permits, approvals, licenses, authorizations, and/or entitlements of/from any and all governmental authority(ies) that will be necessary for the construction, installation, use, operation, inspection, maintenance, service, repair, and/or replacement of the Driveway Improvements for their intended use.

(k) West Orange Trail. The term “**West Orange Trail**” shall mean and refer to that certain multi-use recreational trail and associated amenities, which is open to the public, operated by County, and is presently approximately 22 miles in length running from the Orange County / Lake County line, through the Town of Oakland, the City of Winter Garden, the City of Ocoee, and the City of Apopka, to Welch Road.

ARTICLE II
DRIVEWAY EASEMENT

Section 2.1 Driveway Easement. County does hereby give and grant to Owner a permanent, non-exclusive easement (the “**Driveway Easement**”) over, under, on, upon, through, and across the County Property for the sole and exclusive purposes of: (i) Owner using, operating, inspecting, maintaining, servicing, repairing, and replacing the Driveway Improvements in connection with Owner’s Intended Use, as defined herein; and (ii) the right of ingress, egress, access, and passage by Owner Permittees by means of the Driveway Improvements to/from the Owner Property from/to that certain public right-of-way known as Clarcona Road in connection with Owner’s Intended Use.

Section 2.2 Term. The term of the Driveway Easement shall be perpetual.

Section 2.3 Reservation of Rights. County hereby reserves unto itself all other rights to use the Driveway Easement that are not inconsistent with the easement rights granted pursuant to this Article.

Section 2.4 Restrictions on Use of Driveway Easement. Notwithstanding any term or provision of this Agreement to the contrary, Owner hereby acknowledges and agrees that no improvements of any kind or nature, other than the Driveway Improvements, shall be constructed or installed within the Driveway Easement without the prior written consent of the County. In addition, Owner hereby acknowledges and agrees that the Driveway Easement shall only be used for the Owner's Intended Use.

ARTICLE III **MAINTENANCE OF IMPROVEMENTS; SELF-HELP**

Section 3.1 Maintenance of Driveway Improvements. The Driveway Improvements shall be used, operated, inspected, maintained, serviced, repaired, replaced, and/or reconstructed by Owner, at Owner's sole cost and expense, in a good and safe state of repair and in a reasonably neat, clean, and orderly condition, ordinary wear and tear excepted, and in all events in compliance with the Permits, the County Parks and Recreation Division's archive of the West Orange Trail construction plans, the current Parks and Recreation Division trails safety signage, trail safety graphics, and structural cross section standards for heavy vehicular and truck crossings, and all other applicable governmental regulations and/or requirements (collectively, the "**Owner Maintenance Obligations**").

Section 3.2 County Right to Self-Help Maintenance. In the event that Owner shall fail to timely perform the Owner Maintenance Obligations in accordance with the standards required by this Agreement, then in addition to remedies of County set forth in Article VII below, County may (but shall not be required to) deliver a notice to Owner, setting forth the deficiencies, whereupon Owner shall have the period of time specified by Section 7.1 below to remedy the deficiencies, or twenty-four (24) hours, in case of emergency. In the event the deficiencies are not remedied in a commercially reasonable fashion within the applicable period, or within such twenty-four (24) hour period in case of emergency, County shall have the right (but shall not be required) to undertake all reasonably necessary maintenance, service, repair, replacement, and/or reconstruction of the Driveway Improvements ("**Self-Help Maintenance**") itself and recover from Owner the actual costs and expenses incurred by County in connection therewith ("**Self-Help Maintenance Costs**"). Upon County's completion of any Self-Help Maintenance, County shall submit to Owner a written statement setting forth the Self-Help Maintenance Costs incurred by County (the "**Statement of Self-Help Maintenance Costs**"), together with copies of such other documentation as may be reasonably necessary to substantiate completion of such Self-Help Maintenance and County's Statement of Self-Help Maintenance Costs. Within ten (10) business days after receipt from County of a Statement of Self-Help Maintenance Costs, Owner shall remit to County reimbursement for such Self-Help Maintenance Costs incurred.

ARTICLE IV **INDEMNIFICATION AND INSURANCE**

Section 4.1 Indemnification. Except for any and all claims, suits, judgments, demands, liabilities, damages, costs, and expense (including reasonable attorneys' fees prior to and upon appeal) arising solely out of, or resulting solely from, the negligent or willful acts of County, its officials, agents, and employees, Owner shall defend, indemnify, and hold harmless County and County's officials, agents, and employees from and against any and all claims, suits, judgments, demands, liabilities, damages, costs and expense (including reasonable attorneys' fees prior to and upon appeal) of any kind or nature whatsoever related to the Driveway Easement to the extent directly arising out of, or to the extent caused by:

(a) the negligent use and enjoyment of any part of the County Property by Owner, its directors, officers, employees, agents, contractors, or subcontractors, anyone employed by them, or anyone who acts on Owner's behalf (collectively "**Grantee's Permittees**");

(b) liens and other charges asserted against the County Property for any purpose whatsoever to the extent arising as a result of the actions of Owner or Owner's Permittees;

(c) claims relating to injury to persons or property occurring on or about the County Property, or adjoining lands to the extent caused by the use or control of the same by Owner or Owner's Permittees;

(d) Owner's, or Owner's Permittees', failure to properly construct, install, use, operate, inspect, maintain, service, repair, replace, and/or reconstruct any and all Driveway Improvements within the County Property; and/or

(e) Owner's, or Owner's Permittees', activities over, under, on, upon, through, or across the County Property, or adjoining lands.

Section 4.2 Insurance Requirements.

(a) For as long as this Agreement is in effect, Owner shall obtain and possess:

(1) Commercial General Liability coverage, issued on the most recent version of the ISO form as filed for use in Florida or its equivalent, for all operations under this Agreement, including but not limited to Contractual, Products and Completed Operations, and Personal Injury. The limits shall be not less than \$1,000,000.00 per occurrence. Such coverage shall not contain any endorsement(s) excluding or limiting Product/Completed Operations, Contractual Liability, or Severability of Interests. The general aggregate limit shall either apply separately to this contract or shall be at least twice the required occurrence limit. Orange County, Florida shall be an additional insured on all liability policies by way of a CG 20 26-Designated Persons or Organization endorsement or its equivalent.

(2) All-risk property insurance to cover any and all improvements installed in the County Property, including but not limited to the Improvements, for their full replacement value.

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(3) All parties that perform work on any and all improvements in the County Property, including but not limited to the Improvements, shall have Workers' Compensation coverage for any and all employees with statutory workers' compensation limits, and no less than \$100,000.00 for each incident of bodily injury or disease for Employers' Liability.

(4) All parties that perform work on any and all improvements in the County Property, including but not limited to the Improvements, shall have business automobile liability coverage for all owned, non-owned, and hired vehicles issued on the most recent version of the ISO form as filed for use in Florida, or its equivalent, with limits of not less than \$500,000.00 combined single limit (CSL) per accident. In the event that Owner does not own automobiles, Owner shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the commercial General Liability policy or separate business Auto Liability policy.

(b) Prior to commencing any future construction within the County Property, Owner shall provide Certificates of Insurance to County to verify coverage. The name of the project for which the Improvements are to be installed and the type and amount of coverage provided shall be clearly stated on the face of each Certificate of Insurance. The insurance coverage shall name Orange County, Florida, as an additional insured, and shall contain a provision which forbids any cancellation, changes or material alterations, or renewal of coverage without providing thirty (30) days prior written notice to County.

(c) Owner shall require and ensure that each of its contractors and subcontractors maintains insurance until the completion of their work under any contract associated with the Driveway Easement hereby granted.

(d) Failure of Owner to maintain insurance coverage for itself or for any other persons or entities for whom it is responsible or to ensure that its contractors and subcontractors maintain coverage shall not relieve Owner of any contractual responsibility, obligation, or liability.

ARTICLE V
GENERAL PROVISIONS

Section 5.1 Permits. Owner, at Owner's sole cost and expense, shall: (i) obtain all Permits prior to commencement of any work on the Grantor Property; and (ii) for so long as this Agreement is in effect, keep and maintain all required Permits in full force and effect and in good standing.

Section 5.2 Expansion. At no time shall any alteration of, or deviation from, the Driveway Improvements be made, other than as permitted by the following sentence. Any deviations from the Driveway Improvements must be approved by County, with Owner being responsible for any additional construction costs that may be necessary to in order to obtain County approval.

Section 5.3 Owner Activities. All work performed and other activities undertaken by Owner within any of the County Property shall: (i) comply with all applicable laws and all permits, approvals, codes, and requirements of applicable governmental authorities; and (ii) be performed in a safe and workmanlike manner. Owner, at Owner's sole cost and expense, shall obtain all

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governmental permits and approvals, if any, required in connection with any work performed and other activities undertaken by Owner within any of the County Property.

Section 5.4 Restoration of Surface. Upon completion of any activity within any of the County Property, Owner shall restore and leave the County Property, and the affected surface area thereof, in a clean and neat condition, and otherwise in accordance with the condition required by the Permits, the County Parks and Recreation Division's archive of the West Orange Trail construction plans, the current Parks and Recreation Division trails safety signage, trail safety graphics, and structural cross section standards for heavy vehicular and truck crossings, and other requirements of County's Parks and Recreation Division.

Section 5.5 No Obstruction. At no time shall Owner or any Owner Permittee, nor shall Owner permit or allow any other person to, park any vehicle, motorized or non-motorized, in the County Property, or otherwise obstruct the County Property from being fully used by the public (other than in connection with construction and maintenance activities permitted herein and then with the least interference possible to the ordinary use of the Driveway Easement).

Section 5.6 Construction Liens. No rights granted herein shall permit or empower Owner to encumber the County Property or any other part of the County Property with construction liens arising from the exercise by Owner of the rights granted herein. Owner shall not suffer nor permit any construction lien to be placed upon or against any part of the County Property.

Section 5.7 Relocation. At any time and from time to time in connection with future use or development of the County Property (including but not limited to future expansion and/or reconfiguration of right-of-way and/or future expansion and/or reconfiguration of the West Orange Trail), upon written notification from County, the Driveway Easement granted herein will automatically terminate to the extent necessary for County's use of the County Property, and no compensation will be owed by County to Owner on account of such termination of the Driveway Easement and/or for any Driveway Improvements destroyed and/or removed in the Driveway Easement area. Notwithstanding the foregoing: (i) County shall cooperate with Owner to relocate, reconfigure, or modify any or all of the Driveway Easement area by executing an amendment to this Agreement establishing the new limits of the Driveway Easement whereupon such relocated easement area(s) shall be subject to the terms hereof to the same extent as they applied to the applicable Driveway Easement prior to such relocation, reconfiguration, or modification; and (ii) County, at County's sole cost and expense, shall be solely responsible for the relocation, reconstruction, and/or new construction of any improvements (including but not limited to the Driveway Improvements) required in order to allow Owner to make similar use of the relocated Driveway Easement, as applicable, after such relocation, reconfiguration, or modification as prior to such relocation, reconfiguration, or modification. Any such amendment of this Agreement pursuant to this Section shall be in form and substance acceptable to County and Owner, whose approval of the same shall not be unreasonably withheld, conditioned, or delayed.

ARTICLE VI

COVENANTS AND RESTRICTIONS

Section 6.1 Covenants Running with the Land. All of the covenants, terms, agreements, provisions, and restrictions set forth in this Agreement are intended to be and shall be construed as covenants running with the Owner Property and the Driveway Easement.

(a) The Driveway Easement set forth in this Agreement shall be appurtenant to the Owner Property, for the benefit and use of Owner Permittees, and each of their successors-in-interest and permitted assigns (if any), and shall be binding upon the County Property and the Owner Property and shall be a covenant running with the title to the County Property and the Owner Property.

(b) Any transferee of any portion of the Owner Property shall automatically be deemed, by acceptance of the title thereto, after being duly recorded in the Public Records of Orange County, Florida, to have assumed all limitations, duties, and obligations of Owner, if any, arising under this Agreement relating thereto and to have received an assignment of all rights and benefits of this Agreement relating thereto.

Section 6.2 Assignment. Except as expressly contained in Section 6.1 above, neither this Agreement, nor any right or obligation of any Party arising under this Agreement, may be assigned or delegated without the prior written consent of all Parties.

Section 6.3 No Third-Party Beneficiaries. Except as otherwise expressly set forth herein, no person or entity, other than the Parties, shall have any rights or privileges under this Agreement, either as a third-party beneficiary or otherwise.

Section 6.4 Governmental Authorities. As used in this Agreement, "governmental authority" or "governmental authorities" shall mean any federal, state, county, municipal, or other governmental or quasi-governmental department or entity, or any authority, commission, board, bureau, court, community development district, water management district, or agency having jurisdiction over the Owner Property, the County Property, the West Orange Trail, and/or any portion of any of said lands, including without limitation, the United States Army Corps of Engineers, Orange County, Florida, the School Board of Orange County, Florida, the City of Ocoee, Florida, the Florida Department of Environmental Protection, and the St. Johns River Water Management District.

Section 6.5 Applicable Laws. Any rights granted in this Agreement shall be exercised only in accordance and compliance with any and all applicable laws, ordinances, rules, regulations, permits, and approvals, and any future modifications or amendments thereto.

Section 6.6 Recording. Upon full execution by both Parties hereto, the County shall record this Agreement in the Public Records of Orange County, Florida. Owner shall be responsible for recording fees.

ARTICLE VII
REMEDIES AND ENFORCEMENT

Section 7.1 When a Breach becomes a Default. Except as otherwise provided by this Agreement, no breach, failure to comply with any term or provision of this Agreement, or failure of a covenant, warranty, or representation contained herein, shall be considered a “**Default**” until a non-breaching Party has provided written notice of the breach to the breaching Party and the breach had gone uncured for a period of ten (10) days; provided, however, that if such breach is of a nature that it cannot reasonably be cured within ten (10) days, then the breaching Party shall have ten (10) days from the receipt of written notice from the non-breaching Party to commence said required cure, and the amount of time reasonably necessary to complete said required cure, which reasonable time shall in no event exceed ninety (90) days from the receipt of written notice from the non-breaching Party, unless otherwise extended by the non-breaching Party in writing.

Section 7.2 All Legal and Equitable Remedies Available. In the event of a default by any Party of any of the terms or conditions hereof, the other Parties shall be entitled to relief by remedies permitted at law or in equity, including injunction and specific performance. Notwithstanding the foregoing, under no circumstances shall any party be liable for consequential, special, indirect, exemplary, or punitive damages in the event of Default by such Party hereunder.

Section 7.3 Remedies Cumulative. Subject to the limitations set forth in Section 7.2 above, any remedies specifically provided by this Agreement shall be cumulative with and in addition to all other remedies permitted at law or in equity.

Section 7.4 No Termination for Breach. Notwithstanding any other term or provision of this Agreement to the contrary, no breach hereunder shall entitle any party to unilaterally cancel, rescind, or otherwise terminate this Agreement.

Section 7.5 Attorney’s Fees. The parties expressly agree that each party shall bear the cost of its own attorney and legal fees in connection with any dispute arising out of this Agreement, or the breach, enforcement, or interpretation of this Agreement, regardless of whether such dispute results in mediation, arbitration, litigation, or none of the above, and regardless of whether such attorney and legal fees are incurred at trial, retrial, on appeal, at hearings or rehearings, or in administrative, bankruptcy, or reorganization proceedings.

Section 7.6 Venue. Venue for any action, suit, or proceeding brought to recover any sum due under, or to enforce compliance with, this Agreement shall lie in the court of competent jurisdiction in and for Orange County, Florida; each party hereby specifically consents to the exclusive personal jurisdiction and exclusive venue of such court.

Section 7.7 WAIVER OF JURY TRIAL. THE PARTIES HERETO WAIVE A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING BETWEEN THEM OR THEIR SUCCESSORS UNDER OR CONNECTED WITH THIS AGREEMENT OR ANY OF ITS PROVISIONS AND ANY NEGOTIATIONS IN CONNECTION HERewith.

Section 7.8 Continuing Lien; Delinquent Payments. Subject to the terms, conditions and limitations set forth below, this Agreement shall serve as a continuing lien against the Owner

Property as applicable, for the purposes of securing payment to County of the Self-Help Maintenance Costs, and any interest thereon (the “**Self Help Remedies Lien**”). Any Self Help Remedies Lien may be foreclosed in the same manner as the foreclosure of a Chapter 713 Claim of Lien under Florida law, shall attach and relate back to the date of recording of this Agreement, and shall not be subject to being transferred to cash or bond pursuant to Fla. Stat. s. 713.24. In the event that Owner fails to remit to County any funds, or any portion thereof, required to be remitted to County pursuant to this Agreement (whether pursuant to Section 3.2 above, or otherwise) by the due date thereof: (i) such unpaid funds shall bear interest until paid at the legal rate set by the State of Florida; and (ii) County may, but shall not be required to, record a notice of a Self Help Remedies Lien in the Public Records of Orange County, Florida, to provide public notice of the lien provided by this Section and public notice of Owner’s asserted delinquency hereafter. The remedies provided by this Section shall not be subject to the provisions of Section 7.1 above, but shall be cumulative with, and in addition to, all other remedies permitted by this Agreement, at law, or in equity.

Section 7.9 Sovereign Immunity. For avoidance of doubt, nothing in this Agreement shall constitute, or be deemed or construed as, a waiver of sovereign immunity or limits of liability by County, including its elected officials, officers, employees, or agents, beyond the statutory limited waiver of immunity or limits of liability set forth in Section 768.28, Florida Statutes, as may be amended.

ARTICLE VIII **MISCELLANEOUS**

Section 8.1 Complete Agreement. This Agreement constitutes the entire understanding and agreement between the Parties and supersedes any prior understandings, whether written or oral, with respect to the subject matter hereof, and there are no agreements, understandings, restrictions, representations, or warranties among the Parties other than those set forth herein or herein provided for.

Section 8.2 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same Agreement.

Section 8.3 Modification. This Agreement may be altered, amended, or modified only by written instrument recorded in the Public Records of Orange County, Florida, executed by Owner and County.

Section 8.4 Waiver. No consent or waiver, express or implied, by any Party to or of any breach or default by the other in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent or a waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations of such Party hereunder. Failure on the part of any Party to complain of any act or failure to act of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such person of its rights hereunder.

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Section 8.5 Section Headings. The headings preceding the sections of this Agreement are for convenience only and shall not be considered in the construction or interpretation of this Agreement.

Section 8.6 Gender and Number. All personal pronouns used whether in the masculine, feminine, or neutral gender, shall include all other genders. The singular shall include the plural and the plural shall include the singular unless the context shall indicate or specifically provide to the contrary.

Section 8.7 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, this invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement and a valid, legal, and enforceable provision shall be agreed upon by the Parties and become a part of the Agreement in lieu of the invalid, illegal, or unenforceable provision; in the event a valid, legal, and enforceable provision cannot be crafted, this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein.

Section 8.8 Drafting; Negotiation. All of the Parties to this Agreement have participated fully in the negotiation and preparation hereof; this Agreement shall not be construed more strongly for or against any Party regardless of which Party is deemed to have drafted the Agreement.

Section 8.9 No Partnership. Nothing contained in this Agreement shall be construed to create a partnership or joint venture between the Parties or their successors in interest.

Section 8.10 Governing Law. This Agreement shall be governed by, construed, and enforced under the internal laws of the State of Florida without giving effect to the rules and principles governing the conflicts of laws.

Section 8.11 Calculation of Time Periods. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday, or holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or holiday. The last day of any period of time described herein shall be deemed to end at 6:00 p.m. local time in Orlando, Florida. For purposes of this Agreement, "holiday" shall mean federal holidays as defined in 5 U.S.C. 6103.

Section 8.12 Time. Time is of the essence with respect to this Agreement.

Section 8.13 Notices. Any notice to be given to or served upon any Party hereto, in connection herewith, must be in writing, sent to the appropriate Notice Address for such Party, and may be given by hand delivery; certified mail, return receipt requested; or guaranteed overnight delivery service; and shall be deemed to have been given when actually received by the intended recipient.

(a) Notwithstanding the foregoing, if any notice sent by certified mail, return receipt requested, or by guaranteed overnight delivery service, shall be returned to the sender as

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“unclaimed”, then notice shall be deemed to have been given upon the sender’s receipt of the returned, “unclaimed” notice.

(b) Notwithstanding the foregoing, if any notice sent by certified mail, return receipt requested, or guaranteed overnight delivery service, shall be returned to sender as “undeliverable” because the recipient has changed its mailing address and failed to provide the sender with an updated mailing address, then notice shall be deemed to have been given upon the sender’s receipt of the returned, “undeliverable” notice. It shall be the duty of each Party to this Agreement to notify all other Parties to this Agreement of any change in that Party’s Notice Address.

(c) The Parties acknowledge and agree that their respective legal counsel shall be permitted to deliver notices on behalf of their respective clients.

Section 8.14 Currency. All payments made or to be made under or pursuant to this Agreement, if any, shall be in the lawful money of the United States of America for the payment of public and private debts and no other money or currency.

[Signature Pages and Exhibits Follow]


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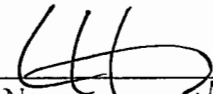
IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date and year written below.

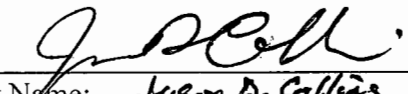
"OWNER"

Signed, sealed and delivered
in the presence of:

ENGELMANN HOLDING COMPANY, a
Florida corporation


Print Name: Jose Henry

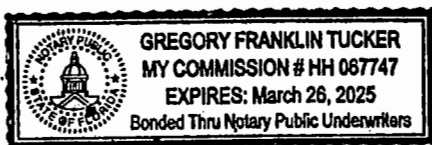
By: 
Print Name: Andrew Engelmann
Title: President

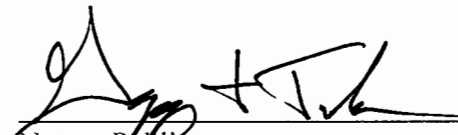

Print Name: Susan D. Collins

STATE OF FLORIDA
COUNTY OF orange

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 16 day of November, 2021, by Andrew Engelmann, as President, of ENGELMANN HOLDING COMPANY, a Florida corporation, on behalf of the corporation. He/she is ☒ personally known to me OR ☐ has produced as identification.

[AFFIX NOTARY SEAL]




Notary Public


Gregory F Tucker
Print Name

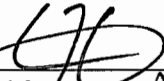
My Commission Expires: 3/26/2025


"OWNER"

Signed, sealed and delivered
in the presence of:

E&H CLARCONA, LLC, a Florida limited
liability company


Print Name: Steve Gaudin

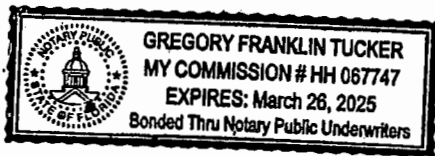
By: 
Print Name: Andrew Engelmann
Title: Manager


Print Name: Nick Long

STATE OF FLORIDA
COUNTY OF Orange

The foregoing instrument was acknowledged before me by means of ☒ physical presence
or ☐ online notarization, this 17 day of November, 2021, by Andrew Engelmann,
as Manager, of E&H CLARCONA, LLC, a Florida limited liability company, on
behalf of the company. He/she is ☒ personally known to me OR ☐ has produced
as identification.

[AFFIX NOTARY SEAL]




Notary Public

Gregory F Tucker
Print Name

My Commission Expires: 3/26/2025

Project: West Orange Trail Crossing (Engelmann Access Easement)

(Official Seal)



ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

BY:

Jerry L. Demings
Jerry L. Demings
Orange County Mayor

DATE:

12/14 December 2024

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

BY:

Emily Rivera
Deputy Clerk

Emily Rivera
Printed Name

Project: West Orange Trail Crossing (Engelmann Access Easement)

EXHIBIT "A"
COUNTY PROPERTY
(a portion of 22-21-28-0000-00-048)

See attached 2 page sketch of description

Description Of Sketch

Sheet 1 of 2

Legal Description: Trail Crossing Easement Agreement

A Portion of land lying within Clarcona Road, described in Official Records Book 4029, Page 1436, Public Record of Orange County, Florida, and West Orange Trail, described in Official Records 1579, Page 642, Public Records, Florida, described as follows:

Commencing at the Southwest corner of Section 22, Township 21 South, Range 28 East, Orange County, Florida, run along the South line of the Southwest 1/4 of said Section 22, South 89°17'28" East, 1292.79 feet, to the Southwest corner of the East 1/2 of the Southwest 1/4 of said Section 22; thence departing said Section line, run North 00°39'50" East, along the West line of the East 1/2 of the Southwest 1/4 of said Section 22, 1974.12 feet, to a point on the North line of the South 1/2 of the NE 1/4 of the Southwest 1/4 of said Section 22; thence departing said Section line, run South 89°52'42" East, along the North line of the South 1/2 of the Southwest 1/4 of said Section 22, 374.84 feet, to the Point of Beginning, said point being a point on the East line of said West Orange Trail,

Thence run South 09°56'10" East, along the East line of said West Orange Trail, 40.12 feet; thence departing the East line of said West Orange Trail, run South 80°03'50" West, 29.35 feet, to the East Right-of-Way line of said Clarcona Road, being a point on a curve concave Westerly, with a radius of 2894.79 feet, with a delta of 01°00'05", and a chord bearing and distance of North 18°45'20" West, 50.60 feet; thence run Northwesterly along said curve, a distance of 50.60 feet; thence departing the East Right-of-Way line of said Clarcona Road, run North 80°03'50" East, 37.11 feet, to the East line of said West Orange Trail; thence run South 09°56'10" East, along the East line of said West Orange Trail, 9.88 feet, to the Point of Beginning.

Containing 1,658 Square Feet or 0.04 Acres, more or less.

This is NOT a Survey.
This is ONLY a Sketch.

Sketch Date: 09-28-21

Drawn By: BMJ

Approved By: PKI

Field: N/A

Sketch of Description Certified To:

ANDREW ENGELMANN

-Notes-

- >Sketch is Based upon the Legal Description Supplied by Client.
- >Abutting Properties Deeds have NOT been Researched for Gaps, Overlaps and/or Hiatus.
- >Subject to any Easements and/or Restrictions of Record.
- >Bearing Basis shown hereon, is Assumed and Based upon the Line Denoted with a "BB".
- >Building Ties are NOT to be used to reconstruct Property Lines.
- >Fence Ownership is NOT determined.
- >Roof Overhangs, Underground Utilities and/or Footers have NOT been located UNLESS otherwise noted.
- >Septic Tanks and/or Drainfield locations are approximate and MUST be verified by appropriate Utility Location Companies.
- >Use of This Sketch for Purposes other than Intended, Without Written Verification, Will be at the User's Sole Risk and Without Liability to the Surveyor. Nothing Hereon shall be Construed to Give ANY Rights or Benefits to Anyone Other than those Certified.

-Legend-

C	- Calculated	PC	- Point of Curvature
CL	- Centerline	Pg	- Page
CB	- Concrete Block	PI	- Point of Intersection
CM	- Concrete Monument	P.O.B.	- Point of Beginning
Conc.	- Concrete	P.O.L.	- Point on Line
D	- Description	PP	- Power Pole
DE	- Drainage Easement	PRM	- Permanent Reference Monument
Esmt.	- Easement	PT	- Point of Tangency
F.E.M.A.	- Federal Emergency Management Agency	R	- Radius
FFE	- Finished Floor Elevation	Rad.	- Radial
Frnd.	- Found	R&C	- Rebar & Cap
IP	- Iron Pipe	Rec.	- Recovered
L	- Length (Arc)	Rfd.	- Roofed
M	- Measured	Set	- Set 1/2" Rebar & Cap "LB 7523"
N&D	- Nail & Disk	Typ.	- Typical
N.R.	- Non-Radial	UE	- Utility Easement
ORB	- Official Records Book	WM	- Water Meter
P	- Plat	Δ	- Delta (Central Angle)
P.B.	- Plat Book	-X-	- Chain Link Fence
W	- Wood Fence		

I hereby Certify that this Sketch of Description of the above Described Property is True and Correct to the Best of my Knowledge and Belief as recently Surveyed under my Direction on the Date Shown, Based on Information furnished to Me as Noted and Conforms to the Standards of Practice for Land Surveying in the State of Florida in accordance with Chapter 5J-17.052 Florida Administrative Codes, Pursuant to Section 472.027 Florida Statutes.

Patrick K. Ireland
Patrick K. Ireland, Surveyor
NO. 6637
STATE OF FLORIDA
FOR THE FIRM

PSM 6637 LB 7623

Date Signed: 09/28/21

This Sketch is intended ONLY for the use of Said Certified Parties.
This Sketch NOT VALID UNLESS Signed and Embossed with Surveyor's Seal.
File No. IS-83619

**Ireland & Associates
Surveying, Inc.**

800 Currency Circle Suite 1020

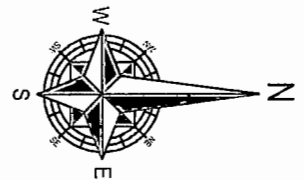
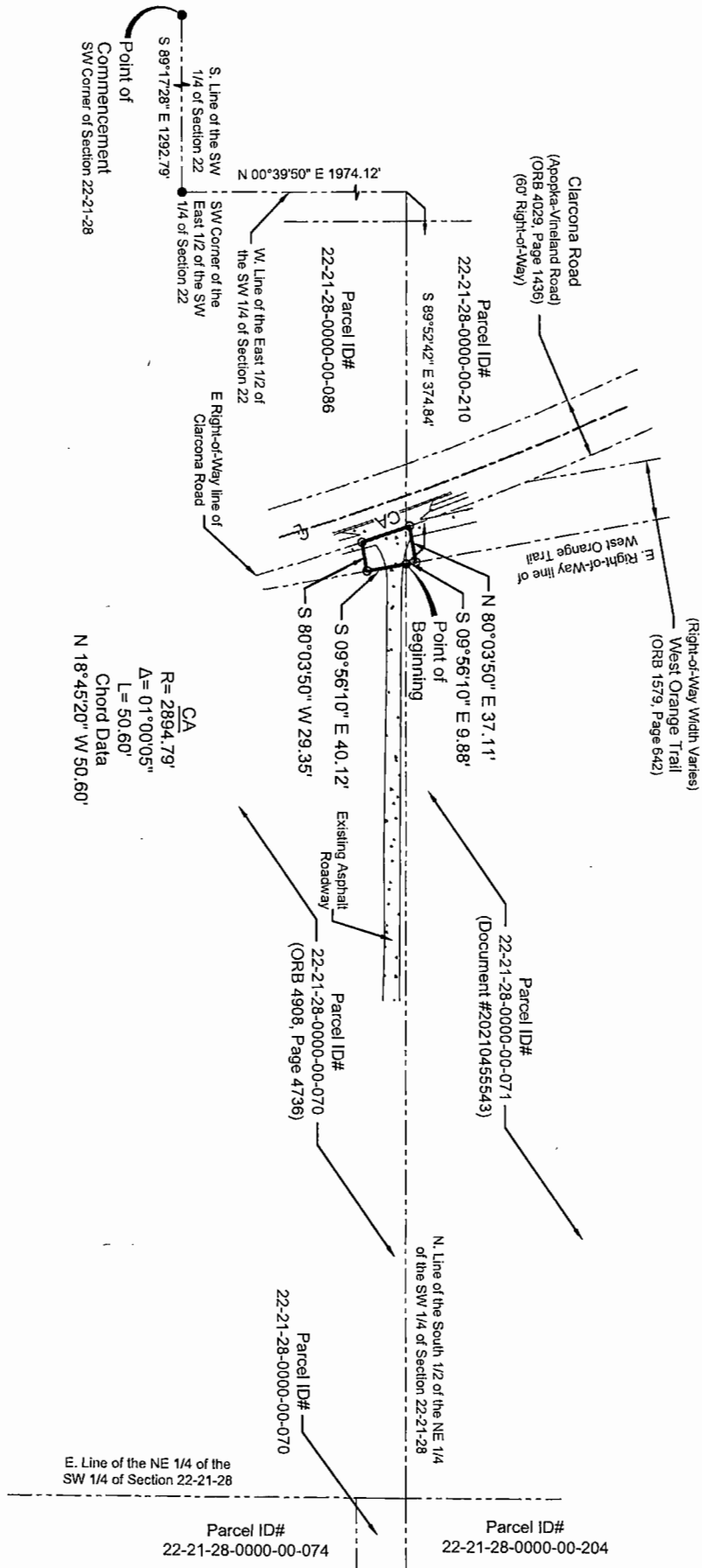
Lake Mary, Florida 32746

www.irelandsurveying.com

Office-407.678.3366 Fax-407.320.8165

Sketch of Description

Sheet 2 of 2



NOT To Scale
This is NOT a Survey.
This is ONLY a Sketch.

*Ireland & Associates
Surveying, Inc.*

800 Currency Circle Suite 1020
Lake Mary, Florida 32746
www.irelandsurveying.com
Office-407.678.3366 Fax-407.320.8165
File No. IS-83619

EXHIBIT "B-1"
ENGELMANN PROPERTY

LOCATION 8 AND 9

Parcel A (22-21-28-0000-00-204):

THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 (LESS THE SOUTH 1/2 THEREOF) AND THE EAST 3 ACRES OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4, SECTION 22, TOWNSHIP 21 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA.

ALSO DESCRIBED AS FOLLOWS:

THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 AND THE EAST 3 ACRES OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4, SECTION 22, TOWNSHIP 21 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA.

Parcel B (28-21-22-0000-00-070):

THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 AND THE NORTH 1/2 OF THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 LYING EAST OF CLARCONA ROAD AND EAST OF THAT STRIP OF LAND KNOWN AS W. ORANGE TRAIL, SECTION 22, TOWNSHIP 21 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA.

LESS AND EXCEPT THE FOLLOWING PARCEL OF LAND:

COMMENCE AT THE SOUTHWEST CORNER OF THE SOUTHEAST 1/4 OF SECTION 22, TOWNSHIP 21 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA; THENCE NORTH 00°48'37" EAST ALONG THE WEST LINE OF SAID SOUTHEAST 1/4 A DISTANCE OF 1316.57 FEET TO THE SOUTHWEST CORNER OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 22 FOR A POINT OF BEGINNING; THENCE CONTINUE NORTH 00°48'37" EAST ALONG THE SAID WEST LINE A DISTANCE OF 608.28 FEET; THENCE SOUTH 89°51'45" EAST A DISTANCE OF 376.03 FEET; THENCE SOUTH 00°48'37" WEST A DISTANCE OF 388.36 FEET; THENCE SOUTH 89°51'02" EAST A DISTANCE OF 308.97 FEET; THENCE SOUTH 00°48'37" WEST A DISTANCE OF 220.00 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 22; THENCE NORTH 89°51'02" WEST ALONG THE SOUTH LINE OF SAID NORTHWEST 1/4 A DISTANCE OF 685.00 FEET TO THE POINT OF BEGINNING.

AND

LESS AND EXCEPT THE FOLLOWING PARCEL OF LAND:

A TRIANGULAR PARCEL OF LAND BOUNDED ON THE WEST BY THE EAST LINE OF THE FORMER ATLANTIC COAST LINE RAILROAD CORRIDOR AND BOUNDED ON THE SOUTH BY THE NORTH LINE OF THE SOUTH QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 21 SOUTH, RANGE 28 EAST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Project: West Orange Trail Crossing (Engelmann Access Easement)

COMMENCE AT THE SOUTHEAST CORNER OF SAID SOUTHWEST QUARTER OF SECTION 22; THENCE NORTH 00°47'54" EAST, 2632.92 FEET TO THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER; THENCE NORTH 89°52'53" WEST ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER 1063.43 FEET TO A POINT ON AFORESAID EAST LINE OF THE FORMER ATLANTIC COAST LINE RAILROAD CORRIDOR; THENCE SOUTH 09°49'36" EAST ALONG SAID EAST LINE 891.26 FEET TO THE POINT OF BEGINNING, SAID POINT ALSO BEING THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE EAST AND HAVING A RADIUS OF 2834.77 FEET; THENCE SOUTHERLY ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 2°14'46", A DISTANCE OF 111.12 FEET TO A POINT ON AFORESAID NORTH LINE OF THE SOUTH QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 22; THENCE SOUTH 89°51'28" EAST, ALONG SAID NORTH LINE, 8.74 FEET; THENCE NORTH 15°18'00" WEST, 113.12 FEET TO THE POINT OF BEGINNING.

Parcel C (22-21-28-0000-00-058):

THE NORTH 1/4 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 LYING EAST OF W. ORANGE TRAIL, SECTION 22, TOWNSHIP 21 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA.

Parcel D (22-21-28-0000-00-211):

THE NORTH 1/4 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 LYING EAST OF CLARCONA RD AND WEST OF W. ORANGE TRAIL, SECTION 22, TOWNSHIP 21 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA.

ALSO DESCRIBED AS FOLLOWS:

COMMENCE AT THE NE CORNER OF NW 1/4 OF SW 1/4 OF SECTION 22, TOWNSHIP 21 SOUTH, RANGE 28 EAST; THENCE RUN SOUTH 89°52'54" EAST 196.91 FEET TO WESTERLY RIGHT-OF-WAY OF WEST ORANGE TRAIL; THENCE RUN SOUTH 09°56'31" EAST 10 FEET FOR POINT OF BEGINNING; THENCE RUN SOUTH 63°26'18" WEST 113.07 FEET; THENCE RUN SOUTH 18°26'18" WEST 42.43 FEET; THENCE RUN SOUTH 26°33'42" EAST 240.14 FEET; THENCE SOUTHERLY 15.02 FEET; THENCE EASTERLY 67.1 FEET TO SAID WESTERLY RIGHT-OF-WAY OF ORANGE TRAIL; THENCE NORTHWESTERLY TO POINT OF BEGINNING.

EXHIBIT "B-2"
E&H PROPERTY

Parcel (22-21-28-0000-00-071):

SOUTH 1/2 OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 22, TOWNSHIP 21 SOUTH, RANGE 28 EAST (LESS ROAD ON THE WEST AND LESS RIGHT OF WAY) LYING EAST OF THAT RIGHT OF WAY DESCRIBED IN OFFICIAL RECORDS BOOK 1579, PAGE 642, ORANGE COUNTY, FLORIDA.

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 22, TOWNSHIP 21 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA; RUN ALONG THE SOUTH LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 22 SOUTH 89°17'28" EAST 1292.79 FEET TO THE SOUTHWEST CORNER OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SAID SECTION 22, THENCE DEPARTING SAID SECTION LINE NORTH 00°39'50" EAST ALONG THE WEST LINE OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SAID SECTION 22, 1974.12 FEET; THENCE DEPARTING SAID SECTION LINE SOUTH 89°20'32" EAST 374.84 FEET TO THE POINT OF BEGINNING; SAID POINT BEING A POINT ON THE EAST LINE OF THAT 60.00 FEET RAILROAD RIGHT OF WAY, TRANSFERRED TO ORANGE COUNTY PER OFFICIAL RECORDS BOOK 1579, PAGE 642 OF THE PUBLIC RECORDS OF ORANGE COUNTY; THENCE NORTH 09°24'59" WEST 334.22 FEET TO THE POINT ON THE NORTH LINE OF THE SOUTH 1/2 OF THE NORTH 1/2 OF THE NORTHEAST, 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 22; THENCE ALONG SAID SECTION LINE SOUTH 89°21'02" EAST 1003.12 FEET TO A POINT ON THE EAST LINE OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 22; THENCE ALONG SAID SECTION LINE SOUTH 01°19'37" WEST 329.23 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTH 1/2 OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 22; THENCE ALONG SAID SECTION LINE NORTH 89°20'32" WEST 940.81 FEET TO THE POINT OF BEGINNING.